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Cases, Regulations and Statutes

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CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

CHAPTER 12

CONVERSION. The Chapter 12 debtor had leased farm property which was used for hay production. The debtor's lease was terminated and the debtor ordered to vacate the property by a court order on March 26, 2012. On March 27, 2012, the debtor filed for Chapter 12 bankruptcy and on May 3, 2012, the debtor filed the bankruptcy schedules. The schedules included a claim for $135,000 resulting from the sale of hay to the plaintiffs sometime between March 27 and May 3, 2012. The hay was to come from the leased farm land. The plaintiffs filed a motion to convert the case to Chapter 7 on the basis of the debtor's fraud in selling them the hay and accepting a deposit for $135,000 without disclosing that the debtor had lost the property under court order and had filed for bankruptcy. The Bankruptcy Court held that conversion was required because of the debtor's fraudulent conduct. In addition, the plaintiffs established sufficient facts to demonstrate the debtor's intent to deceive the plaintiffs in selling the hay and accepting the $135,000 while knowing that the debtor had no hay to sell. Thus, the Bankruptcy Court held that the case was converted to Chapter 7. The appellate court affirmed in a decision designated as not for publication. ***In re* Clark, 2016 U.S. App. LEXIS 10835 (9th Cir. 2016), *aff'g*, 2014 U.S. Dist. LEXIS 28375 (D. Idaho 2014), *aff'g*, 2014 Bankr. LEXIS 97 (Bankr. D. Idaho 2014)**.

The debtor filed for Chapter 12 and had aggregate debts of $4,489,690, making the debtor ineligible for Chapter 12. The debtor sought to convert the case to Chapter 11 but the trustee and a creditor objected that the conversion of a Chapter 12 case to Chapter 11 is not authorized by the Bankruptcy Code. The court looked at the division of cases on the issue, noting that some courts have allowed conversion to Chapter 11 if the Chapter 12 case is filed in good faith, the debtor is eligible for Chapter 11 and the conversion is equitable. However, the court sided with the other courts and held that Section 1208 provides no authority for conversion of Chapter 12 cases to Chapter 11; therefore, the case was dismissed. ***In re* Colon, 2016 Bankr. LEXIS 2344 (Bankr. D. P.R. 2016)**.

CORPORATIONS

OWNERSHIP OF FARM LAND. As amended in 1981, *N.D. Cent. Code § 10-06-01 et seq.*, prior to 2015 allowed only family farms to incorporate and own farmland if they had 15 or fewer related persons as shareholders. See Harl, *Agricultural Law*, § 51.04[3][c]. In March 2015, the North Dakota legislature modified the state's corporation's law to permit all corporations to own and to operate dairy and pork farms of up to 640 acres. In June 2016, North Dakota voters in a referendum rejected the 2015 changes.

FEDERAL FARM PROGRAMS

No Items.

FEDERAL ESTATE AND GIFT TAXATION

PORTABILITY. The decedent died, survived by a spouse, on a date after the effective date of the amendment of I.R.C. § 2010(c), which provides for portability of a "deceased spousal unused exclusion" (DSUE) amount to a surviving spouse. To obtain the benefit of portability of the decedent's DSUE amount to the spouse, the decedent's estate was required to file Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return*, on or before the date that is 9 months after the decedent's date of death or the last day of the period covered by an extension. The decedent's estate did not file a timely Form 706 to make the portability election. The estate discovered its failure to elect portability after the due date for making the election. The estate represented that the value of the decedent's gross estate was less than the basic exclusion amount in the year of the decedent's death including any taxable gifts made by the decedent. The estate requested an extension of time pursuant to Treas. Reg. § 301.9100-3 to elect portability of the decedent's DSUE amount pursuant to I.R.C. § 2010(c)(5)(A). The IRS granted the estate an extension of time to file Form 706 with the election. **Ltr. Rul. 201626001, March 15, 2016; Ltr. Rul. 201626008, March 16, 2016; Ltr. Rul. 201626014, March 17, 2016; Ltr. Rul. 201626015, March 14, 2016; Ltr. Rul. 201626018, March 14, 2016; Ltr. Rul. 201626019, March 21, 2016; Ltr. Rul. 201626021, March 10, 2016; Ltr. Rul. 201626022, March 15, 2016.**

FEDERAL INCOME TAXATION

ACCOUNTING METHOD. The IRS has issued a revenue procedure which provides the procedures by which a taxpayer may obtain the automatic consent of the Commissioner to change to or from the net asset value method of accounting provided in Treas. Reg. § 1.446-7 (see T.D. 9774, 81 Fed. Reg. 44508 (July 8, 2016)) for gain or loss on shares in a money market fund (MMF). **Rev. Proc. 2016-39, I.R.B. 2016-30, *modifying*, Rev. Proc. 2016-29, 2016-1 C.B. 880**.

BUSINESS EXPENSES. The taxpayers, husband and wife, filed joint returns. The husband owned a company taxed as an S corporation and worked as an employee of the company full time. The husband purchased a 79 acre property and constructed a warehouse on the property which was to be used to store beer hops grown on the property for sale to breweries. During the tax years involved, the husband planted seeds but did not harvest the crop. The only other activity was the contacting of breweries to determine their interest in purchasing hops. The husband claimed to work 10-15 hours per week on the hops activity. In 2009, the taxpayer sold 1.9 acres of the property to an unrelated party. The taxpayers filed Schedule E to report their share of the S corporation tax items and Schedule C for the hops activity. The court upheld the IRS disallowance of deductions for the hops activity because the activity was not operated with sufficient continuity and regularity to be a business. The court upheld the IRS allowance of deductions of some of the expenses as personal expenses on Schedule A as miscellaneous deductions. The S corporation claimed deductions for bad debts. The evidence showed that the bad debts were actually work performed by the company for which it was not paid; therefore, the court held that the bad debt deductions were properly disallowed. The S corporation also claimed deductions for health insurance benefits paid for the husband. The court held that, because the husband owned more than 2 percent of the corporation, the benefits were deductible by the corporation and included in the husband's taxable income. The corporation also claimed deductions for expenses for three vehicles used in the business. However, the corporation did not have any written records to substantiate the business use of the vehicles; therefore, the court denied the deductions. The appellate court, with some minor adjustments to the deduction amounts allowed, affirmed in a decision designated as not for publication. **Powell v. Comm'r, 2016-1 U.S. Tax Cas. (CCH) ¶ 50,323 (4th Cir. 2016), *aff'g*, T.C. Memo. 2014-235**.

The taxpayer operated a pottery business and timely filed returns for 2008 and 2009. The taxpayer did not keep full and accurate business records and the IRS filed a notice of deficiency for unreported income based on the bank deposits made by the taxpayer. The taxpayer presented evidence that several of the deposits were from the proceeds of bona fide loans and some were from gifts. The court accepted this evidence and reduced the unreported income. The taxpayer also claimed business expense deductions which were disallowed by the IRS for lack of substantiation. The court upheld the IRS determination because the taxpayer did not provide sufficient records or other substantiation for the deductions claimed. **Nguyen v. Comm'r, T.C. Memo. 2016-126**.

DISCHARGE OF INDEBTEDNESS. In 2008, the taxpayer opened a checking account funded with a check from another account with another bank. The taxpayer withdrew cash from the new account before the check cleared, leaving the new account overdrawn by $7,875. The bank closed the account in August 2008. In December 2011 the bank issued a Form 1099-C, *Cancellation of Debt*, for the overdrawn amount. The taxpayer did not include the amount in taxable income. Under Treas. Reg. § 6050P-1(b)(2)(iv), an identifiable event for discharge of indebtedness is deemed to occur when no payments are made on a debt for 36 months. Thus, the court held that, because the taxpayer made no payments on the overdrawn account from August 2008 to December 2011, the discharge was deemed to occur in December 2011 and the taxpayer had discharge of indebtedness income for 2011. The court found that, in 2011, the taxpayer had assets of $35,500 and liabilities over $50,000; therefore, the court held that the entire $7,875 of discharge of indebtedness income was excludible from income under I.R.C. § 108(a)(1)(B) because the taxpayer was insolvent by more than the amount discharged. **Newman v. Comm'r, T.C. Memo. 2016-125**.

DOMESTIC PRODUCTION ACTIVITY DEDUCTION. The taxpayer was a specialty retailer of private branded, casual-to-dressy clothing, intimates, accessories, and non-clothing gift items, all manufactured, produced, grown, or extracted (MPGE) outside the United States. The taxpayer produced, through third party printers, catalogs, mailers and other printed materials which were sent to potential customers to advertise the products sold through stores, web sites and phone orders. The advertising media did not include advertisements sold to other retailers. The taxpayer argued that a portion of its retail sales proceeds were domestic production gross receipts (DPGR) from advertising income under Treas. Reg. § 1.199-3(i)(5)(ii)(A) because the cost of the printed materials was included in the price of the goods sold. Thus, the taxpayer argued that a portion of the profits from the retail sales were attributable to the printed materials. In a Chief Counsel Advice letter, the IRS ruled that it was inappropriate for the taxpayer to characterize any gross receipts derived from the sale of its products as DPGR from advertising income under Treas. Reg. § 1.199-3(i)(5)(ii)(A) (or any other I.R.C. § 199 rule) because the taxpayer's products were MPGE outside of the United States, and therefore, gross receipts from the sale of the products are non-DPGR. The IRS noted that the taxpayer did not claim any revenue from the sale of advertising to other businesses or customers. **CCA 201626024, Feb. 19, 2016**.

EDUCATION EXPENSES. The taxpayer attended law school in Germany and obtained a license to practice law. The taxpayer moved to the United States and attended law school. The taxpayer passed the bar examination in New York. During law school, the taxpayer was a manager of a building project and filed a *qui tam* action under the False Claims Act, although the record was unclear as to the dates of these activities. The taxpayer claimed deductions for expenses relating to the legal education in the United States. The taxpayer argued that the United States law degree was not a requirement for the New York bar examination; therefore, the education expenses were deductible under Treas. Reg. § 1.162-5(a) as education necessary to maintain or improve the taxpayer's law skills. The court found that the taxpayer failed to prove that the taxpayer was qualified to take the New York bar exam on the basis of the German law degree and license or by any other qualifications except for the law school degree obtained in the United States. Thus, the legal education expenses were not eligible for a deduction. The appellate court affirmed in a decision designated as not for publication. **O'Connor v. Comm'r, 2016-1 U.S. Tax Cas. (CCH) ¶ 50,331 (10th Cir. 2016), *aff'g*, T.C. Memo. 2015-155**.

HEALTH INSURANCE. The IRS has issued proposed regulations amending the regulations governing the premium tax credit. To avoid repayments of advance credit payments for taxpayers who experience an unforeseen decline in income, the existing regulations provide that if an insurance exchange determines at enrollment that the taxpayer's household income will be at least 100 percent but will not exceed 400 percent of the applicable federal poverty line (FPL), the taxpayer will not lose the status as an applicable taxpayer solely because household income for the year turns out to be below 100 percent of the applicable FPL. To reduce the likelihood that individuals who recklessly or intentionally provide inaccurate information to an exchange will benefit from an exchange determination, the proposed regulations provide that a taxpayer whose household income is below 100 percent of the FPL for the taxpayer's family size is not treated as an applicable taxpayer if, with intentional or reckless disregard for the facts, the taxpayer provided incorrect information to an exchange for the year of coverage. Similarly, to reduce the likelihood that individuals who recklessly or intentionally provide inaccurate information to an exchange will benefit from an exchange determination, the proposed regulations provide that an individual who was determined or considered by an exchange to be ineligible for Medicaid, CHIP, or a similar program (such as a Basic Health Program) may be treated as eligible for coverage under the program if, with intentional or reckless disregard for the facts, the individual (or a person claiming a personal exemption for the individual) provided incorrect information to the exchange. The proposed regulations also amend the regulations governing opt-out arrangements and an employee's required contribution and Department of Defense health benefit programs. **REG-109086-15, 81 Fed. Reg. 44557 (July 8, 2016)**.

HOBBY LOSSES. The taxpayer was an attorney involved in the patent business. The taxpayer also owned and operated an antique car restoration activity. The restoration activity did not prosper and the taxpayer eventually reduced the inventory of vehicles. The court held that the activity was engaged in with the intent to make a profit because (1) the activity was operated in a business-like manner, (2) the taxpayer had experience in operating a business and was an expert on restoration of vehicles, (3) the taxpayer abandoned unprofitable aspects of the activity, (4) the taxpayer spent considerable time on the activity, and (5) the losses did not offset substantial income from other employment. **Main v. Comm'r, T.C. Memo. 2016-127**.

LIKE-KIND EXCHANGES. The IRS has published a notice which provides a proposed revised qualified intermediary (QI) withholding agreement with the IRS under Treas. Reg. § 1.1441-1(e)(5)1. In general, the QI agreement allows foreign persons to enter into an agreement with the IRS to simplify their obligations as a withholding agent and as a payor under for amounts paid to their account holders. The QI agreement currently in effect, as provided in *Rev. Proc. 2014-39, 2014-2 C.B. 150*, expires on December 31, 2016. The proposed changes to the QI agreement described in this notice, subject to any modifications included in a revenue procedure containing the final QI agreement (to be issued later in 2016), will apply to QI agreements that are in effect on or after January 1, 2017. **Notice 2016-42, I.R.B. 2016-29**.

LIMITED LIABILITY COMPANIES. In a Field Attorney Advice letter, the IRS discussed the designation of a tax matters partner for limited liability companies (LLC). For purposes of applying I.R.C. §6231(a)(7) and Treas. Reg. §301.6231(a)(7)-1 to an LLC, only a member-manager of an LLC is treated as a general partner, and a member of an LLC who is not a member-manager is treated as a partner other than a general partner. Treas. Reg. §301.6231(a)(7)-2(a). For purposes of I.R.C. §6231(a)(7), member-manager means a member of an LLC who, alone or together with others, is vested with the continuing exclusive authority to make the management decisions necessary to conduct the business for which the organization was formed. Generally, an LLC state statute may permit the LLC to choose management by one or more managers (whether or not members) or by all of the members. If there are no elected or designated member-managers of the LLC, each member will be treated as a member-manager for purposes of this section. Treas. Reg. §301.6231(a)(7)-2(b)(3). The letter discusses the Georgia LLC law which allows an LLC to provide in its articles of organization for a member or members to be vested with control of the LLC. In the absence of such a provision, all members of an LLC have the authority to act as an agent of the LLC. Thus, the IRS ruled that, where an LLC organization agreement has designated a specific member as a manager, that person has the authority to act as the designated tax matters partner. **FAA 20161801F, July 5, 2016**.

MORTGAGE INTEREST DEDUCTION. The taxpayer lived with a domestic partner who owned a residence. The partner was the only title holder and the sole mortgagee on the loan secured by the residence. The taxpayer claimed to have paid the partner $1,000 per month in cash to cover the interest on the loan. The taxpayer presented no evidence of these payments except a letter from the partner to the taxpayer's lawyer stating that the taxpayer made the $1,000 monthly payments for 10 years. The partner did not testify in the case. The taxpayer testified that the partner paid for all maintenance and insurance for the property. The mortgage company issued Forms 1098, *Mortgage Interest Statement*, solely to the partner for the years in issue. The taxpayer claimed the full interest, $15,720, as a mortgage interest deduction for 2011 and 2012. Treas. Reg. § 1.163-1(b) provides that "[i]nterest paid by the taxpayer on a mortgage upon real estate of which he is the legal or equitable owner, even though the taxpayer is not directly liable upon the bond or note secured by such mortgage, may be deducted as interest on his indebtedness." The court found that the taxpayer failed to provide any evidence of the taxpayer's equitable interest in the property or proof that the interest payments were an obligation of the taxpayer. Therefore, the court held that the taxpayer was not eligible for the mortgage interest deduction because the taxpayer did not have a legal or equitable ownership of the property or personal liability on the debt. **Jackson v. Comm'r, T.C. Summary Op. 2016-33**.

PARTNERSHIPS

ELECTION TO ADJUST BASIS. The taxpayer was a limited liability company classified as a partnership for federal tax purposes. During the tax year, an interest in the taxpayer was transferred by sale but the taxpayer's tax advisor failed to inform the taxpayer about the I.R.C. § 754 election to adjust the basis of partnership property. The IRS granted the taxpayer an extension of time to file an amended return with the election. **Ltr. Rul. 201626007, March 22, 2016**.

ENTITY CLASSIFICATION. The taxpayer was an association eligible to elect to be treated as an association taxable as a corporation for federal tax purposes but failed to timely file Form 8832, *Entity Classification Election*, to elect to be treated as an association taxable as a corporation. The IRS granted an extension of time to file Form 8832. **Ltr. Rul. 201626006, March 22, 2016**.

PENSION PLANS. The IRS has issued a revenue procedure which modifies the IRS determination letter program for qualified plans to eliminate, as of January 1, 2017, the five-year remedial amendment cycle system for individually designed plans, currently set forth in *Rev. Proc. 2007-44, 2007-2 C.B. 54*. Effective January 1, 2017, a sponsor of an individually designed plan will be permitted to submit a determination letter application only for initial plan qualification, for qualification upon plan termination, and in certain other circumstances, as described in the revenue procedure. The revenue procedure provides an extended remedial amendment period under I.R.C. § 401(b) for individually designed plans. The revenue procedure describes and makes clarifying changes to the six-year remedial amendment cycle system for pre-approved qualified plans and modifies the six-year remedial amendment cycle system, as applicable, to reflect changes that have been made to the determination letter program for individually designed plans. In addition, the revenue procedure delays until August 1, 2017, the beginning of the 12-month submission period for master and prototype (M&P) plan sponsors and volume submitter (VS) practitioners to submit pre-approved defined contribution plans for opinion or advisory letters during the third six-year remedial amendment cycle. The extended remedial amendment period for individually designed plans and the six-year remedial amendment cycle system for pre-approved plans are established pursuant to the authority under I.R.C. § 401(b) and its underlying regulations to extend the remedial amendment period and pursuant to the authority under I.R.C. § 7805(b) to establish the effective date of any rule or regulation. The revenue procedure is effective January 1, 2017. The revenue procedure clarifies, modifies, and supersedes *Rev. Proc. 2007-44*, modifies sections 2.07 and 24.03 of *Rev. Proc. 2015-36, 2015-1 C.B. 20*, and modifies sections I and III of *Notice 2015-84, 2015-2 C.B. 880*. **Rev. Proc. 2016-37, I.R.B. 2016-29**.

RETURNS. The IRS has published information about filing amended returns. Taxpayers should amend their tax return if they need to correct the filing status, the number of dependents or the total income on the original return. Taxpayers should also amend their return to claim tax deductions or tax credits that were not claimed on the original return. The instructions for Form 1040X, *Amended U.S. Individual Income Tax Return*, list more reasons to amend a return. *When Not to amend*. In some cases, taxpayers do not need to amend a tax return. The IRS will make corrections, such as math errors, for taxpayers. If a taxpayer did not include a required form or schedule, for example, the IRS will mail the taxpayer a notice about the missing item. *Form 1040X*. Use Form 1040X to amend a federal income tax return that has been filed before. Taxpayers must file an amended return by paper; amended returns cannot be filed electronically. Taxpayers should make sure to check the box at the top of the form that shows which year's return is being amended. Form 1040X has three columns. Column A shows amounts from the original return. Column B shows the net increase or decrease for the amounts that are changing. Column C shows the corrected amounts. Taxpayers should explain what items are changing and the reasons why on the back of the form. *More than one tax year*. If a taxpayer files an amended return for more than one year, use a separate 1040X for each tax year. Mail them in separate envelopes to the IRS. See "Where to File" in the instructions for Form 1040X for the address to be used. *Other forms or schedules*. If the changes have to do with other tax forms or schedules, make sure you attach them to Form 1040X when filing the form or the omission will cause a delay in processing. *Amending to claim an additional refund*. If a taxpayer is waiting for a refund from the original tax return, the taxpayer should not file the amended return until after receipt of the refund. Taxpayers may cash the refund check from the original return. Amended returns take up to 16 weeks to process. Taxpayers will receive any additional refund owed from the amended return. *Amending to pay additional tax*. If a taxpayer is filing an amended tax return because the taxpayer owes more tax, the taxpayer should file Form 1040X and pay the tax as soon as possible in order to limit interest and penalty charges. *Reconciling the Premium Tax Credit*. A taxpayer may also want to file an amended return if: the taxpayer filed and incorrectly claimed a premium tax credit, or the taxpayer received a corrected or voided Form 1095-A. For more information, see *Corrected, Incorrect or Voided Forms 1095-A for Tax Years 2014 and 2015* on www/IRS.gov. *When to file*. To claim a refund, taxpayers must file Form 1040X no more than three years from the date they filed your original tax return. A taxpayer can also file for a refund no more than two years from the date the taxpayer paid the tax, if that date is later than the three-year rule. *Tracking a return*. Taxpayers can track the status of their amended tax return three weeks after filing with "Where's My Amended Return?" available on IRS.gov or by phone at 866-464-2050. **IRS Summertime Tax Tip 2016-02**.

LANDLORD AND TENANT

BREACH OF LEASE. The defendant had leased farm land from a parent for several years. After the death of the defendant, the land was owned by a family in which the defendant was one of three trustees. The other two trustees sold the farm land to the plaintiff subject to the terms of the existing lease. The lease provided (1) all planting decisions were to be made jointly with the owners, (2) the owners were to have access to the farm at all times, (3) the expenses and profits were to be equally shared by the landlord and tenant, and (4) the defendant was required to plant all crops in a timely fashion. In May 2013 the plaintiff filed for declaratory and injunctive relief to terminate the lease because the defendant refused to communicate with the plaintiff, the defendant had not begun planting preparations or discussed planting plans with the plaintiff, and the defendant prevented access to the farm land. The trial court granted a injunction based on the defendant's breach of the lease's terms because the defendant was unable or unwilling to plant crops in a timely manner. The trial court found that, although the defendant had ordered seed, the seed supplier refused to deliver the seed. On appeal the appellate court affirmed noting that the trial court had sufficient evidence that the defendant had no ability to plant the 2013 crop in a timely manner. **Hope Farms, LLC v. Gumm, No. 14-1371 (Iowa Ct. App. June 29, 2016)**.

SECURED TRANSACTIONS

AGRICULTURAL SUPPLIER LIEN. The debtor was a hog producer who had granted a bank a security interest in hogs. After the security interest was perfected, the debtor obtained from a creditor feed which was used to raise the hogs from birth. The supplier claimed that the supplier's lien under Iowa Code § 570A.5(3) gave its lien superpriority over the bank's security interest to the extent the feed increased the value of the hogs. The bank countered that the supplier had not properly perfected a lien for the entire amount of feed sold because it had not filed a financing statement "within thirty-one days after" each date the debtor purchased feed. In addition, the bank argued that the lien did not apply to the full market value of the pigs because the pigs had an acquisition value equal to the cost of creating the pigs, including such items as veterinary costs and feed costs for the sows giving birth to the pigs. The federal District Court certified two questions to the Iowa Supreme Court: (1) Pursuant to Iowa Code § 570A.4(2), is an agricultural supply dealer required to file a new financing statement every thirty-one days in order to maintain perfection of its agricultural supply dealer's lien as to feed supplied within the preceding thirty-one (31) day period? (2) Pursuant to Iowa Code § 570A.5(3), is the "acquisition price" zero when the livestock are born in the farmer's facility? The Iowa Supreme Court held that (1) an agricultural supply dealer's financing statement cannot perfect a lien under Iowa Code § 570A.4 for quantities of feed sold on credit after the statement is filed. Instead, the agricultural supply dealer's financing statement only perfects a lien for the feed purchases occurring during the thirty-one days preceding the filing of the financing statement and (2) pigs born in the debtor's operation had an acquisition price of zero. **Oyens Feed & Supply, Inc. v. Primebank, 2016 Iowa Sup. LEXIS 63 (Iowa 2016),** ***on certified questions from*** **2015 U.S. Dist. LEXIS 59646 (N.D. Iowa 2015)**.

STATE TAXATION

HOBBY LOSSES. The taxpayer first purchased a 40 acre ranch in 1998 and used the land to produce hay for sale and for feed for the taxpayer's animals. In 2002 the taxpayer started a horse breeding operation but discontinued the breeding after five years. In 2006 the taxpayer purchased a larger ranch for raising cattle, again using hay grown on the property and purchased feed. From the beginning of the ranch operations in 1998 through 2010, the taxpayer reported state tax losses for each year but showed a small profit in 2014 by claiming some farm deductions as personal deductions. In Oregon, the state income tax rules mirror the federal rules, including the deduction of farm losses and the determination as to whether a farm is operated for profit. Thus, the court looked at the factors in Treas. Reg. § 1.183-2(b) to determine whether the taxpayer operated the ranch for profit. The court held that the taxpayer did not operate the ranch with the intent to make a profit because (1) the ranch was not operated in a businesslike manner since the taxpayer did not maintain records sufficient for determining which animals were profitable or for analyzing why the ranch did not produce a profit; (2) the taxpayer had no expectation of any increase in value of the ranch assets; (3) the taxpayer had no prior business successes; (4) the operation produced 16 years of losses; (5) the operation produced no profits; (6) the losses offset substantial income from the taxpayer's main employment; and the taxpayer received personal pleasure from the activity. **Horton v. Department of Revenue, 2016 Ore. Tax LEXIS 85 (Ore. Tax Ct. 2016)**.

AGRICULTURAL TAX SEMINARS

by Neil E. Harl

Here are the cities and dates for the seminars in 2016:

August 17-18, 2016 - Holiday Inn, Council Bluffs, IA
August 24-25, 2016 - Quality Inn, Ames, IA
September 15-16, 2016 - Ramkota Hotel, Sioux Falls, SD
September 22-23, 2016 - Holiday Inn, Rock Island, IL

See the last page for more information or visit www.agrilawpress.com.

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AGRICULTURAL TAX SEMINARS

by Neil E. Harl

See page 119 above for 2016 cities and dates.

Join us for expert and practical seminars on the essential aspects of agricultural tax law. Gain insight and understanding from one of the country's foremost authorities on agricultural tax law. The seminars will be held on two days from 8:00 am to 5:00 pm. Registrants may attend one or both days. On the first day, Dr. Harl will speak about farm and ranch estate and business planning. On the second day, Dr. Harl will cover farm and ranch income tax. Your registration fee includes written comprehensive annotated seminar materials for the days attended and lunch. A discount ($25/day) is offered for attendees who elect to receive the manuals in PDF format only **(see registration form online for use restrictions on PDF files)**.

The topics include:

First day

FARM ESTATE AND BUSINESS PLANNING

New Legislation
Succession planning and the importance of fairness
The Liquidity Problem
Property Held in Co-ownership
- Federal estate tax treatment of joint tenancy
- Severing joint tenancies and resulting basis
- Joint tenancy and probate avoidance
- Joint tenancy ownership of personal property
- Other problems of property ownership

Federal Estate Tax
- The gross estate
- Special use valuation
- Property included in the gross estate
- Traps in use of successive life estates
- Basis calculations under uniform basis rules
- Valuing growing crops
- Claiming deductions from the gross estate
- Marital and charitable deductions
- Taxable estate
- The applicable exclusion amount
- Unified estate and gift tax rates
- Portability and the regulations
- Federal estate tax liens
- Gifts to charity with a retained life estate

Gifts
- Reunification of gift tax and estate tax
- Gifts of property when debt exceeds basis

Use of the Trust
The General Partnership
- Small partnership exception
- Eligibility for Section 754 elections

Limited Partnerships
Limited Liability Companies
- Developments with passive losses
- Corporate-to-LLC conversions
- New regulations for LLC and LLP losses

Closely Held Corporations
- State anti-corporate farming restrictions
- Developing the capitalization structure
- Tax-free exchanges
- Would incorporation trigger a gift because of severance of land held in joint tenancy?
- "Section 1244" stock
- Status of the corporation as a farmer
- The regular method of income taxation
- The Subchapter S method of taxation, including the "two-year" rule for trust ownership of stock
- Underpayment of wages and salaries

Financing, Estate Planning Aspects and Dissolution of Corporations
- Corporate stock as a major estate asset
- Valuation discounts
- Dissolution and liquidation
- Reorganization
- Entity Sale
- Stock redemption

Social Security
- In-kind wages paid to agricultural labor

Second day

FARM INCOME TAX

New Legislation
Reporting Farm Income
- Constructive receipt of income
- Deferred payment and installment payment arrangements for grain and livestock sales
- Using escrow accounts
- Payments from contract production
- Items purchased for resale
- Items raised for sale
- Leasing land to family entity
- Crop insurance proceeds
- Weather-related livestock sales
- Sales of diseased livestock
- Reporting federal disaster assistance benefits
- Gains and losses from commodity futures, including consequences of exceeding the $5 million limit

Claiming Farm Deductions
- Soil and water conservation expenditures
- Fertilizer deduction election
- Depreciating farm tile lines
- Farm lease deductions
- Prepaid expenses
- Preproductive period expense provisions
- Regular depreciation, expense method depreciation, bonus depreciation
- Repairs and Form 3115; changing from accrual to cash accounting
- Paying rental to a spouse
- Paying wages in kind
- PPACA issues including scope of 3.8 percent tax

Sale of Property
- Income in respect of decedent
- Sale of farm residence
- Installment sale including related party rules
- Private annuity
- Self-canceling installment notes
- Sale and gift combined.

Like-Kind Exchanges
- Requirements for like-kind exchanges
- "Reverse Starker" exchanges
- What is "like-kind" for realty
- Like-kind guidelines for personal property
- Partitioning property
- Problems in Exchanges of partnership assets

Taxation of Debt
- Turnover of property to creditors
- Discharge of indebtedness
- Taxation in bankruptcy.

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